

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BILL CANNON,

Plaintiff,

- against -

RODALE INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Bill Cannon (“Cannon” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Rodale Inc., (“Rodale” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a photograph of an old grist mill, owned and registered by Cannon, a Pennsylvania based photojournalist. Accordingly, Cannon seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Cannon is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 777 West Germantown Pike, #1022, Plymouth Meeting, PA 19462. Cannon's work has appeared in many publications around the country.

6. Upon information and belief, Rodale is a foreign business corporation duly organized and existing under the laws of the State of Pennsylvania, with a place of business at 733 3rd Avenue, #6, New York, New York 10017. Rodale is registered with the New York State Department of Corporations to do business in New York. At all times material hereto, Rodale has owned and operated the website at the URL: www.Rodalesorganiclife.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Cannon photographed an old grist mill (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Cannon is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph is registered with the United States Copyright Office and given registration number VA 2-026-273.

B. Defendant's Infringing Activities

10. Upon information and belief, Rodale ran an article on the the Website entitled *This Mill Was Making Organic Flour in the 1950s!* See

<http://www.rodalorganiclife.com/garden/this-mill-was-making-organic-flour-in-the-1950s>. The article prominently featured the Photograph. A true and correct copy of the article are attached hereto as Exhibit B.

11. Rodale did not license the Photograph from Plaintiff for its article, nor did Rodale have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST RODALE)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Rodale infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Rodale is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Rodale have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Rodale be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs.
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 4, 2017

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